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17
18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 IN RE: JUUL LABS, INC., MARKETING,
21 SALES PRACTICES, AND PRODUCTS
22 LIABILITY LITIGATION

23 _____
24 This Document Relates to:

25 *Roberto Pesce v. Juul Labs, Inc., et al.*
26 _____

Case No. 19-md-02913-WHO

**DEFENDANT JUUL LABS, INC.'S
STATEMENT IN SUPPORT OF
MAINTAINING UNDER SEAL
PORTIONS OF PLAINTIFF'S
OPPOSITION TO DEFENDANT
BOWEN'S MOTION FOR SUMMARY
JUDGMENT**

Hon. William H. Orrick

1 Pursuant to Civil Local Rule 79-5(f)(3), Defendant Juul Labs, Inc. (“JLI”) respectfully
2 submits this Statement in Support of Maintaining Under Seal Portions of Plaintiff’s Opposition to
3 Bowen’s Motion for Summary Judgement. The exhibits that JLI seeks to maintain under seal
4 (collectively, the “Sealed Exhibits”) are portions of Exhibits 15, 17, 18, 25, 35, and 39 of Plaintiff’s
5 Opposition to Defendant’s Motion.

6 Plaintiff filed the Sealed Exhibits provisionally under seal pursuant to Civil Local Rule
7 79-5(f). *See* ECF No. 3095.

8 **Basis For Request to Maintain the Sealed Exhibits Under Seal**

9 It is well-established that “access to judicial records is not absolute,” and that certain types
10 of non-public, commercially sensitive documents may be protected from public disclosure.
11 *See Kamakana v. City and Co. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Rule 26 of the
12 Federal Rules of Civil Procedure provides district courts with broad discretion to seal filed materials
13 in order to protect, among other things, “a trade secret or other confidential research, development,
14 or commercial information.” *See* Fed. R. Civ. P. 26(c)(1)(g).

15 A party seeking to seal materials must provide “compelling reasons” to do so. *Kamakana v.*
16 *City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). The Ninth Circuit has recognized
17 that compelling reasons to seal information exist when public disclosure of the information might
18 harm a party’s “competitive standing.” *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008)
19 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). There also may be
20 compelling reasons to seal materials that contain proprietary information, confidential business
21 strategy, or similar documents, the disclosure of which “would result in harm to [the designating
22 party’s] business.” *Tryfonas v. Splunk*, No. 17-cv-01420-HSG, 2018 WL 3077762, at *2
23 (N.D. Cal. 2018).

24 There are compelling reasons to grant JLI’s request to redact Exhibits 15, 17, 18, 25, 35,
25 and 39, which contain descriptions of JLI’s confidential Pre-Market Tobacco Product Application
26 (“PMTA”) submitted to the Food and Drug Administration and the contents of which have not been
27 publicly disclosed, confidential information about JLI suppliers, and proprietary data about JLI’s
28 products, including but not limited to proprietary formulas, testing results from studies

1 commissioned by JUUL, and evaluations of potential suppliers and component part manufacturers.
2 See Declaration of Renee D. Smith at ¶¶ 2–8. Courts routinely seal similar confidential
3 competitively sensitive information. See, e.g., *In re Electronic Arts, Inc.*, 298 Fed. App’x 568, 569
4 (9th Cir. 2008) (finding compelling reasons to seal pricing terms, royalty rates, and guaranteed
5 minimum payment terms); *Transperfect Glob., Inc. v. Motionpoint Corp.*, 2013 WL 209678, at *1
6 (N.D. Cal. 2013) (sealing document containing “proprietary information about Transperfect’s
7 business operations and technology”). Accordingly, JLI respectfully submits that compelling
8 reasons exist for maintaining the Sealed Exhibits under seal.

9 Dated: May 6, 2022

Respectfully submitted,

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By: /s/ Renee D. Smith

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